

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14485 of G.S.P. Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7106.1 to use the subject premises as a restaurant seating 125 persons in an HR/SP-2 District at premises 1335 Green Court, N.W., (Square 247, Lot 831).

HEARING DATE: October 8, 1986

DECISION DATE: November 5, 1986

FINDING OF FACT:

1. The subject site is located in the center of the square bounded by Massachusetts Avenue, 13th, 14th and L Streets, N.W. and is known as premises 1335 Green Court, N.W. The property, as an alley lot, has no street frontage. It is in an SP-2 District.

2. This site is situated on the northeast corner of the intersection of two alleys. The east-west alley, known as Green Court, is thirty feet wide and extends easterly from 14th Street to the rear of properties which front on 13th Street. The north-south alley is fifteen feet wide and extends through the square from L Street to Massachusetts Avenue.

3. The site contains approximately 2, 000 square feet of land area and is improved with a two-story structure which occupies the total area of the lot.

4. The property is surrounded by office buildings, apartment houses and parking lots. To the north of the site, across a fifteen foot dead-end alley, is an apartment house. East of that is an office building. Immediately east of the subject site is a warehouse building. South of the site is a parking lot fronting on L Street.

5. By BZA Order No. 13677, dated May 24, 1982, the Board granted a special exception to use the subject premises as a restaurant for a period of three years. Prior to Board approval of the restaurant use the subject site was occupied by a uniform supply company. No Certificate of Occupancy was issued for that use. The most recent Certificate of Occupancy issued for the subject premises

prior to the restaurant use was Certificate of Occupancy No. B121103, dated July 3, 1980, for an office.

6. The subject premises was renovated for restaurant use at a cost of approximately \$348,000. The facility provided a limited menu with food prepared and served on the premises and had capacity of approximately 125 to 130 seats.

7. The restaurant was in operation for approximately one year and nine months. The applicant-owner was unable to continue the operation of the restaurant due to past debts and operating losses.

8. By BZA ORDER No. 14363 dated June 26, 1986 the Board denied an application for a special exception under Sub-section 7106.11 to continue to use the subject premises as a restaurant seating 125 persons at the site. In that instance the applicant proposed a nightclub with live music and dancing, a limited menu, generally no food after 10:00 P.M. with the major sales coming from alcoholic beverages. That application generated opposition from neighborhood organizations, businesses and individuals. That application was denied on the grounds that the proposal would have an adverse impact on the immediate area in terms of pedestrian and vehicular traffic, lighting and noise.

9. The Green Court Corporation which has a 15-year lease for the building, has now proposed a full-service restaurant and will also offer comedy dinner entertainment in the upstairs dining room through stand-up comedians. It would offer a complete menu ranging from steaks, seafood and speciality items, to fancy sandwiches and will offer the full menu to all patrons until 12:30 A.M. weekdays and later on weekends. Applicant has indicated its intention to rely heavily on lunch and dinner purchases for profitability and expects the sale of alcoholic beverages would be less than 50 percent of its gross revenues. There would be no dancing or dance music and the level of noise generated by the dinner entertainment will be relatively low.

10. The restaurant would cater largely to the increasing number of area office workers and to residents, as well as the growing population of hotel guests in the area surrounding the Convention Center.

11. The proposed operator currently operates a restaurant providing comedy dinner entertainment in the Crystal City area which has been operated successfully for two years.

12. Based upon its existing restaurant operations, the applicant anticipates an adult clientele consisting primarily of couples in their twenties or thirties, or older, as well as families and small groups or clubs seeking

dinner and comedy entertainment. The proposed hours of operation of the restaurant are 11 A.M. until 2:00 A.M. Sun through Friday and 11:00 A.M. until 3:00 A .M. on Saturdays. Dinner would be served until approximately one and one half hours before closing in order to give patrons time to finish their meals prior to closing and dinner entertainment will continue until approximately one hour before closing.

13. No exterior alterations to the premises are proposed with the exception that the existing sign would be replaced with a similar sign having the name of the new establishment and meeting all zoning and sign regulations. Appropriate cleaning and painting will also be performed. The interior of the premises will remain substantially the same. The dining areas on the first and second floors would be in the south end of the building away from any residential area to the north of the site while the rear of the building on the first floor will be occupied by the kitchen area and on the second floor by a heavy partition wall, an office and restroom facilities. The exterior masonry walls, approximately one foot thick, would remain.

14. The applicant's traffic consultant indicated approximately 96 percent of lunchtime customers would arrive by foot while evening patrons would consist of 20 percent auto drivers, 20 percent auto passengers, 25 percent taxicab and 35 percent walk-in or other. Accordingly, there may be a demand for up to 25 parking spaces around 7 P.M. Within one block of the subject site, there are at least 38 on-street metered spaces and 1,040 garage and lot spaces in six area parking garages and lots. This includes a large lot across Green Court immediately south of the site containing 150 spaces. These parking accommodations provide ample space beyond any anticipated requirements. There is no requirement for off-street parking because the building was constructed prior to 1958 and has a parking credit from the previous non-conforming use.

15. Applicant's traffic expert testified the restaurant will generate only a minor amount of automobile traffic, most of which would be confined to the surrounding street system, not the interior alleys or Green Court, and such traffic can be accommodated easily.

16. Applicant's traffic expert explained that apartment buildings in the area currently experience substantial noise impact from the major roadways surrounding the square and the heavy volume of traffic on them, including traffic 24 hours per day. Massachusetts Avenue, particularly, generates noise due to the Thomas Circle underpass and its echo effect together with the hill and stop light requiring trucks to downshift, stop and start again. The traffic expert estimated this noise would be substantially greater than any noise generated by the restaurant.

17. Applicant's traffic expert also testified that any patrons arriving by automobile would likely park their vehicles in the open parking lot fronting on L Street and located to the south of the site away from any residential areas or in parking garages also in the opposite direction from apartment buildings. Patrons arriving by foot or taxicab also would be inclined to depart from L Street as opposed to Massachusetts Avenue due to roadway configurations and the relative ease of access via L Street. The traffic expert thus anticipated little additional traffic whether pedestrian or vehicular in nature through the alley extending from Green Court to Massachusetts Avenue past the apartment houses on Massachusetts Avenue.

18. Loading will be handled from the rear of the building in a stub alley with daily truck activities including two trucks before 8: A.M. one or two trucks before 11:00 A.M. or between 3:00 P.M. and 5:00 P.M. Alleys surrounding the subject site have historically been used for loading functions at the site and applicant's traffic expert testified that the proposed use will generate only a minimum amount of additional delivery traffic in the alley system.

19. There will be no fumes or smoke or noxious odors emitted from the restaurant and no vibrations resulting from its operation.

20. By letter dated September 22, 1986 Advisory Neighborhood Commission (ANC) 2-C reported its support for the application. In the opinion of the ANC the proposed would not adversely affect the present character of the neighborhood, would not have any deleterious effects on the surrounding area, would be a benefit to the community and would fulfill the purposes of the HR/SP-2 district. ANC 2-C also found the proposed use would be a source of local employment, would increase local tax revenue and would place a now vacant building back into active use to benefit the community and city. The ANC further reported that although it had previously opposed the restaurant proposal because of the operator's reputation it did not consider that the proposed full service restaurant would have any such adverse impact. Any prior opposition to the restaurant operations at the site were thereby withdrawn. The Board for reasons discussed below does not concur with the recommendation of the ANC.

21. The Logan Circle Community Association, by letter of September 23, 1986, reported its support of the application. It stated it had reviewed the credentials of the operator and believes the proposal will be an excellent use of the premises and will serve both the neighborhood residents and the growing number of office and retail workers. The Logan Circle Community Association further stated that given the unusual nature of the building (i.e.

its interior location and size) and the difficulty in using it for other purposes, the restaurant proposed would be the most reasonable use for this structure.

22. The Franklin Square Association, by letter of September 24, 1986, supported the application. It noted that members of the Franklin Square Association had visited the applicant's Crystal City operation and had spoken with the applicant concerning plans for the subject site.

23. The Baptist Home of the District of Columbia, (commonly known as Thomas House), also supported the application by letter of September 23, 1986 from the President of its Board of Trustees. At the hearing, Mr. Thomas Dowd of the Baptist Home testified in support of the application but expressed his general concern about noise and late night traffic in the alley extending from Green Court to Massachusetts Avenue. He proposed limited hours of operation.

24. Other area businesses and property owners submitted letters in support of the application.

25. By letter of August 25, 1986, Officer Robert Rainey of the Metropolitan Police Department explained his opinion that the operation of the restaurant would have no adverse impact on the surrounding area with respect to traffic, parking, noise, public safety and crime and that the presence would improve the area. Mr. Rainey based his opinion upon his patrol of the area at the time the former restaurant was in operation, his knowledge of its operations, the absence of any complaints and the absence of any noise, parking or traffic problems created by that restaurant during its operations.

26. An owner of the adjacent property, an apartment building of 87 units at 1314 Massachusetts Avenue, testified in opposition to the application. He testified that since the original restaurant closed he's had less turn over and vacancies in his apartments that face the subject building on the alley side. He expressed his concern about noise, traffic and criminal elements which would result from the restaurant operation. He further testified that he and his counsel met unsuccessfully with the applicant to negotiate the hours of operation so that the owner could support the application. He requested that any approval of the application include conditions to accommodate his general concerns. The conditions he proposed were as follows:

- a. No dancing in the restaurant
- b. Full-service menu until at least one and one half hours before closing.

- c. All waiters and waitresses fully clothed.
- d. No musical entertainment other than light music intended only as an enhancement to dining or as accompaniment to the stand-up comedian entertainment.
- e. All loading confined to the stub alley behind the restaurant and conducted in an orderly fashion which allows delivery trucks to unload and quickly exit the premises.
- f. No signs that will cause light to reflect into the windows of any of the apartments in the building at 1314 Massachusetts Avenue, N.W.
- g. No deliveries before 7:30 A.M. nor after 5:00 P.M. except for emergencies.
- h. Garbage picked up at least three days per week.
- i. Any advertising shall indicate access to the restaurant from L Street.
- j. BZA approval limited to three years.
- K. Hours of operation limited to 12:00 midnight Sunday through Thursday and 1:00 A.M. Friday and Saturday.

27. The applicant indicated its willingness to accept such conditions with the exception of the limited hours of operation. The applicant testified that the limitation as to hours proposed by the opposing witness was unreasonable and unnecessary and would preclude the proposed comedy dinner entertainment. That, in turn, would result in applicant being unable to attract the quality of dinner entertainment desired and would result in an operation which could not succeed financially. As a compromise, applicant suggested that operations could be reduced to 1:00 A.M. on weekdays and 2:00 A.M. on Fridays and Saturdays.

28. The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to writing. The Board in addressing the recommendation of the ANC to grant the application in addition to the similar recommendation of neighborhood associations and individuals finds that it is more persuaded by the testimony of the concerns of the owner of the apartment house most directly affected by the proposal as detailed in Finding No. 26 and the applicant's response thereto as detailed in Finding No.

27. The Board find that the operation of the restaurant as proposed would have an adverse affect on the adjoining property owner.

29. On November 21, 1986 the applicant submitted a proposal to reopen the record. At its Public Meeting of December 3, 1986 the Board declined to entertain the proposal.

CONCLUSION OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. The granting of such special exception relief requires a showing that applicant has met the requirements of Paragraph 7106.11 of the Zoning Regulations and that the relief to be granted is in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property pursuant to Sub-section 8207.2.

Paragraph 7106.11 provides in pertinent part that a nonconforming use may be changed to a use which is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at lease 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterioius external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

7106.113 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

7106.116 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The Board concludes that the applicant has not met the burden of proof. The Board concludes that the proposed use would have an adverse impact on the immediate area in terms of pedestrian and vehicular traffic, lighting and noise. The Board further concludes that the special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will tend to affect adversely the use of neighboring property in accordance with said Regulations and Maps. The Board further concludes that it has accorded the ANC the "great weight" to which it is entitled. It is therefore ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, Maybelle T. Bennett, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: DEC 12 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14485order/DON26